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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 SECURITIES AND EXCHANGE  
12 COMMISSION,

13 Plaintiff,

14 v.

15 GINA CHAMPION-CAIN AND ANI  
16 DEVELOPMENT, LLC,

17 Defendants, and

18 AMERICAN NATIONAL  
19 INVESTMENTS, INC.,

20 Relief Defendant.  
21

Case No.: 3:19-cv-1628-LAB-AHG

**ORDER GRANTING RECEIVER'S  
MOTION FOR APPROVAL OF  
SALE OF 4829 BELLA PACIFIC  
ROW PROPERTY**

**[ECF No. 421]**  
22

23 **I. BACKGROUND**

24 As described in prior orders, *see, e.g.*, ECF Nos. 54, 162, 163, this is an action  
25 brought by the Securities and Exchange Commission (“SEC”) against Defendants ANI  
26 Development, LLC (“ANI Development”) and Gina Champion-Cain and Relief Defendant  
27 American National Investments, Inc. (“ANI Inc.”), alleging violations of federal securities  
28 laws based on a purportedly fraudulent liquor license loan scheme. ECF No. 1.

1           On September 3, 2019, the Court established an equitable receivership and appointed  
2 Krista L. Freitag (“Receiver”) as a permanent receiver of ANI Development and ANI Inc.,  
3 authorizing her to take control over all funds and assets owned, managed, or in the  
4 possession or control of the receivership entities. *See* ECF No. 6 at 14-16. In that role, the  
5 Receiver acts under the control and direction of the Court to facilitate the “orderly and  
6 efficient administration of the estate . . . for the benefit of creditors.” *SEC v. Hardy*, 803  
7 F.2d 1034, 1038 (9th Cir. 1986). *See also Atl. Tr. Co. v. Chapman*, 208 U.S. 360, 370  
8 (1908) (explaining that a motion to appoint a receiver to take charge of property is “to the  
9 end that the property might be cared for and preserved for all who had or might have an  
10 interest in the proceeds of its sale. . . . Immediately upon such appointment and after the  
11 qualification of the receiver, the property passed into the custody of the law, and  
12 thenceforward its administration was wholly under the control of the court by its officer [],  
13 the receiver.”). On December 11, 2019, the presiding judge in this action, Chief Judge  
14 Burns, granted the parties’ Joint Motion (ECF No. 156) to give limited consent to the  
15 undersigned to hear and directly decide all motions filed in this action to approve sales of  
16 receivership assets. ECF No. 160. *See also* 28 U.S.C. § 636(c); CivLR 72.1(g). All property  
17 sale motions are set before the undersigned pursuant to that grant of consent.

18           On August 11, 2020, the Receiver filed the present Motion for Approval of Sale of  
19 4829 Bella Pacific Row Property (the “Bella Pacific Motion”). ECF No. 421. The motion  
20 concerns one of the residential real properties within the receivership estate, a single-family  
21 residence located at 4829 Bella Pacific Row, Unit 215, San Diego, California (the “Bella  
22 Pacific Property”). *See* ECF No. 421-1 at 5; ECF No. 76-2 at 6 (listing the Bella Pacific  
23 Property in the Preliminary Real Estate and Liquor License Asset Schedule filed on  
24 October 3, 2019).

25           On August 11, 2020, the Court entered an order setting a briefing schedule and a  
26 September 18, 2020 hearing on the Bella Pacific Motion. ECF No. 423. The Court set a  
27 deadline of August 25, 2020 for responses in opposition to the motion and noted that “[i]f  
28 the motion is unopposed and the overbid submission deadline has passed with no overbids,

1 the Court may take the motion under submission without oral argument.” *Id.* at 2. No  
2 opposition was filed. Further, bid qualifications from prospective bidders seeking to submit  
3 overbids pursuant to the notice and auction process set forth in 28 U.S.C. §§ 2001 and 2002  
4 (described in more detail below) were due by September 7, 2020. *See* ECF No.  
5 421-1 at 11; ECF No. 423 at 2. The Receiver filed a Notice of Non-Receipt of Qualified  
6 Overbids regarding the Bella Pacific Motion on September 9, 2020. ECF No. 450.  
7 Accordingly, the Court took the motion under submission on the papers on  
8 September 14, 2020. ECF No. 455.

9 For the reasons explained more fully below, the Court **GRANTS** the Bella Pacific  
10 Motion.

## 11 **II. LEGAL STANDARD**

12 “[I]t is a recognized principle of law that the district court has broad powers and  
13 wide discretion to determine the appropriate relief in an equity receivership.” *SEC v.*  
14 *Lincoln Thrift Ass’n*, 577 F.2d 600, 606 (9th Cir. 1978). Where a district court sits in equity,  
15 “[u]nless a statute in so many words, or by a necessary and inescapable inference, restricts  
16 the court’s jurisdiction in equity, the full scope of that jurisdiction is to be recognized and  
17 applied. ‘The great principles of equity, securing complete justice, should not be yielded  
18 to light inferences, or doubtful construction.’” *Porter v. Warner Holding Co.*, 328 U.S.  
19 395, 398 (1946).

20 “[A] district court’s power to supervise an equity receivership and to determine the  
21 appropriate action to be taken in the administration of the receivership is extremely broad.”  
22 *Hardy*, 803 F.2d at 1037. As part of this broad discretion, the district court sitting in equity  
23 and having custody and control of property “has power to order a sale of the same in its  
24 discretion. The power of sale necessarily follows the power to take control of and to  
25 preserve property[.]” *SEC v. Am. Capital Investments, Inc.*, 98 F.3d 1133, 1144 (9th Cir.  
26 1996), *abrogated on other grounds by Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83,  
27 93-94 (1998) (quoting 2 Ralph E. Clark, Treatise on Law & Practice of Receivers § 482  
28 (3d ed. 1992)). If the court approves an equitable receiver’s proposed property sale, the

1 sale “does not . . . purport to convey ‘legal’ title, but rather ‘good,’ equitable title enforced  
2 by an injunction against suit.” *Id.* (citing 2 Clark, Treatise on Law & Practice of Receivers,  
3 §§ 342, 344, 482(a), 487, 489, 491).

4 Pursuant to 28 U.S.C. § 2001(a), realty in the possession of an appointed receiver is  
5 subject to a public sale process, “upon such terms and conditions as the court directs.”  
6 28 U.S.C. § 2002 further requires that notice be published once a week for at least four  
7 weeks prior to the sale in at least one newspaper regularly issued and of general circulation  
8 in the county, state, or judicial district where the realty is located.<sup>1</sup> These safeguards of  
9 notice and opportunity to submit overbids help to ensure that the sale is able to fetch the  
10 best price possible, which is consistent with the principle that “a primary purpose of equity  
11 receiverships is to promote orderly and efficient administration of the estate by the district  
12 court for the benefit of creditors.” *Hardy*, 803 F.2d at 1038. *See also United States v.*  
13 *Grable*, 25 F.3d 298, 303 (6th Cir. 1994) (noting that “the intent of” the requirement in 28  
14 U.S.C. § 2001 that property be sold in the county in which the land is situated is “to bring  
15 a better price at the sale”).

### 16 **III. DISCUSSION**

#### 17 **A. Background of the Property and Proposed Sale**

18 The Bella Pacific Property was purchased on April 5, 2019, by 2466 1st Avenue  
19 LLC, an affiliated receivership entity, for \$475,000. ECF No. 421-1 at 5; *see also* ECF No.  
20 6 at 4 (the Court’s Appointment Order, listing 2466 1st Avenue LLC as an entity subject  
21 to the equitable receivership).

22 Following her appointment, the Receiver and her staff analyzed the value of the  
23 Bella Pacific Property by reviewing automated valuation scores and a survey of market-  
24 comparable properties. ECF No. 421-2 ¶ 3. The Receiver consulted with multiple licensed  
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27 <sup>1</sup> 28 U.S.C. § 2001 also provides for a private sale process under subsection (b), but the  
28 requirements of that subsection are more stringent. The Receiver does not propose a private  
sale here.

1 brokers and ultimately selected Resonate Real Estate (“Broker”)<sup>2</sup> and listed the property  
2 for sale at a listing price of \$495,000. *Id.*

3 Beginning in January 2020, Broker marketed the Bella Pacific Property by listing it  
4 on the local MLS and its website. *Id.* ¶ 4. Because of the Covid-19 epidemic, Broker used  
5 3D marketing and socially distant property tours in compliance with guidance from the  
6 California Association of Realtors. *Id.* ¶ 4. Broker received two offers—one that was  
7 cancelled during due diligence and the current offer. *Id.* The Receiver negotiated terms  
8 with the offeror, Shawn Reed (“Buyer”), and following negotiations, the Bella Pacific  
9 Property went into escrow on July 9, 2020 with a purchase price of \$490,000. *Id.*; *see also*  
10 ECF No. 421-1 at 6. Buyer undertook the expense of getting the condominium project  
11 approved for financing by the Veteran’s Administration and received such approval on July  
12 28, 2020. *Id.* The Receiver and Buyer executed a California Residential Purchase  
13 Agreement and Joint Escrow Instructions (“Purchase Agreement”), along with an  
14 Addendum making court approval of the sale a condition of closing and providing for the  
15 overbid and auction process required by 28 U.S.C. §§ 2001 and 2002. ECF No. 421-3,  
16 Freitag Decl. Ex. A. Buyer agreed that the sale would be as-is, removed all contingencies  
17 other than Court approval, and deposited \$7,500 into escrow. *Id.* at 3.

### 18 **B. Proposed Procedures and Distribution**

19 In the motion seeking approval of the sale, the Receiver proposed compliance with  
20 the overbid and auction process mandated by 28 U.S.C. §§ 2001 and 2002 by publishing  
21 the following notice in the San Diego Union-Tribune once a week for four weeks:

22 In the action pending in U.S. District Court for the Southern District of  
23 California, Case No. 19-CV-01628-LAB-AHG, Securities and Exchange  
24 Commission v. Gina Champion-Cain, et al., notice is hereby given that the  
25 court-appointed receiver will conduct a public auction for the real property  
located at 4829 Bella Pacific Row in San Diego County, California. Sale is

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27 <sup>2</sup> The Receiver also enlisted the services of Resonate Real Estate in conjunction with the  
28 sale of a single-family residence located at 3548 Tennyson Street, San Diego, California,  
92106. ECF No. 280.

1 subject to Court confirmation after the auction is held. Minimum bid price is  
2 at least \$500,000. The auction will take place on September 10, 2020 at 1:30  
3 p.m. in front of the entrance to the United States Courthouse, 221 W.  
4 Broadway, San Diego, California or as otherwise determined by the Court. To  
5 be allowed to participate in the auction, prospective purchasers must meet  
6 certain bid qualification requirements, including submitted a signed purchase  
7 and sale agreement, an earnest money deposit of \$8,250, and proof of funds.  
8 All bidders must be qualified by 5:00 p.m. PT on September 7, 2020, by  
9 submitting the required materials to the receiver at 501 West Broadway, Suite  
10 290, San Diego, California, 92101.

11 ECF No. 421-1 at 11. For those interested in qualifying as bidders, the notice also provided  
12 a phone number and email address for the relevant point of contact. *Id.*

13 As previously noted, the Receiver filed a Notice of Non-Receipt of Qualified  
14 Overbids Regarding the Bella Pacific Motion on September 9, 2020. ECF No. 450. In the  
15 Notice, the Receiver informs the Court that, after filing the Bella Pacific Motion, and in  
16 addition to publishing the above notice in the San Diego Union-Tribune as proposed, she  
17 posted notice of the Motion on the receivership website (anireceivership.com) and  
18 continued to market the property through Broker and notify potential purchasers about the  
19 opportunity to submit an overbid by September 7, 2020. *Id.* at 2. No overbids were  
20 submitted by the deadline. *Id.* Therefore, Shawn Reed remains the intended Buyer.

21 The Bella Pacific Property is one of four properties in the receivership estate  
22 encumbered by a deed of trust in favor of Seattle Funding Group (the “SFG loan”). ECF  
23 No. 421-1 at 6. The estimated principal balance outstanding for the interest-only SFG loan  
24 (prior to the sale of the Bella Pacific Property) is \$1.1 million.<sup>3</sup> ECF No. 421-2 ¶ 5. The  
25 documents governing the loan provide for partial release prices to facilitate the sale of

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26 <sup>3</sup> According to the Receiver’s calculations, “the remaining three receivership assets  
27 encumbered by this loan have estimated market values exceeding \$1 million in the  
28 aggregate.” ECF No. 421-2 ¶ 5.

1 separate properties. *See* ECF No. 421-1 at 6. Assuming a September 2020 closing with the  
2 September 2020 loan payment having been made in the ordinary course, the Receiver’s  
3 estimate of the release price for the 4829 Bella Pacific is \$411,000.00 to \$414,000.<sup>4</sup> *Id.*

4 Turning to the proposed distribution of the \$490,000, the Receiver intends to use the  
5 proceeds of the sale of the Bella Pacific Property to pay the release price. *Id.* The Receiver  
6 estimates that the receivership estate will pay property tax in the range of \$1,400 to \$1,800,  
7 depending on when the sale closes (but again, assuming a September 2020 closing). ECF  
8 No. 421-2 ¶ 5. The Receiver also estimates that costs of sale including escrow, title, and  
9 recording fees will be approximately \$4,900. *Id.* Broker’s commission pursuant to the  
10 listing agreement is \$19,600 (4% of the sales price) and will be split with Buyer’s broker  
11 *Id.* Additionally, Receiver has agreed to give the buyer a \$10,000 credit towards recurring  
12 and non-recurring closing costs. *Id.* Based on these estimates, the Receiver anticipates that  
13 the net sale proceeds for the receivership estate will be in the range of \$40,000 to \$43,000.  
14 *Id.*

### 15 **C. Court Approval of Procedures and Proposed Sale**

16 The Court has reviewed the documents submitted by the Receiver in support of the  
17 Bella Pacific Motion, including the Purchase Agreement, and finds the purchase price of  
18 \$490,000 to be fair and reasonable. This price exceeds the April 2019 purchase price of the  
19 property by \$15,000. Although the sale price of \$490,000 falls short of the listing price of  
20 \$495,000 and the Receiver had to give the buyer a \$10,000 credit, the Receiver obtained  
21 other valuable concessions, such as sale of the property “as is with all faults,” removal of  
22 all contingencies except Court approval, and making the sale subject to the requisite public  
23 notice and auction process of 28 U.S.C. §§ 2001 and 2002. *See* ECF No. 421-3 at 16-21.  
24 Additionally, the proposed total commission of 4% of the gross sales price, to be split by  
25 Broker and the broker for the Buyer, is within the lower range of industry standards. The  
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28 <sup>4</sup> The Court anticipates a slight adjustment to this figure and the following estimates as the sale likely will not close until October 2020.

1 Court further finds the Receiver has demonstrated that Broker adequately marketed and  
2 advertised the property—having shown the property for seven months despite the  
3 additional challenges presented by the Covid-19 pandemic—to be sure to fetch fair market  
4 value for the property. *See* ECF No. 421-1 at 10; ECF No. 421-2 ¶ 4. And, importantly, the  
5 sale of the Bella Pacific Property brings the receivership estate closer to paying off the SFG  
6 loan—with a remaining principal balance of approximately \$692,000—in full, which will  
7 reduce the ongoing monthly expenses of the receivership estate and thus aid the Receiver  
8 in ultimately creating a better return for all creditors.

9 As for the procedures followed, the Court finds that all of its uniform property sale  
10 procedures have been satisfied. *See* ECF No. 219. The Receiver’s publication of notice  
11 seeking qualified overbids in the San Diego Union-Tribune, in addition to the solicitation  
12 of overbids through the receivership website and continued efforts to market the property,  
13 establish that the Receiver satisfied the public sale and auction procedures set forth in  
14 28 U.S.C. §§ 2001 and 2002, which are designed to ensure that the best purchase price for  
15 realty within the receivership is obtained. Upon review of the factual history and the  
16 Purchase Agreement itself, the Court finds the Purchase Agreement was negotiated at  
17 arm’s-length and, further, that the Receiver implemented sufficient safeguards by way of  
18 the notice and overbid process to garner the highest possible price for the property. The  
19 Court is thus satisfied that the intent of the statutory scheme—to ensure that the best and  
20 highest possible price is paid for property within the receivership estate—has been fulfilled.

21 Based on these considerations, and noting in particular the lack of any opposition to  
22 the Bella Pacific Motion, the Court finds the Receiver has sufficiently established that the  
23 proposed sale of the Bella Pacific Property and proposed distribution of the sale proceeds  
24 are consistent with principles of equity and the goal of a receivership to ensure the orderly  
25 and efficient administration of the estate for the benefit of creditors. *See Hardy*, 803 F.2d  
26 at 1038.

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1       **IV. CONCLUSION**

2           Having considered the Receiver’s Motion for Approval of Sale of 4829 Bella Pacific  
3 Row Property (ECF No. 421) on its merits and noting that there is no opposition thereto,  
4 the Court **GRANTS** the Motion, and **APPROVES** the proposed sale of the single-family  
5 residence located at 4829 Bella Pacific Row, Unit 215, San Diego, California to Buyer  
6 Shawn Reed, as described in the Purchase Agreement attached as Exhibit A to the  
7 Declaration of the Receiver (ECF No. 421-3). The purchase price of \$490,000 for the Bella  
8 Pacific Row Property is confirmed and approved.

9           The Court further **ORDERS** the proceeds of the sale to be distributed from escrow  
10 at the close of sale as follows:

11           (1)    The Receiver shall pay lender Seattle Funding Group the amount necessary to  
12 have the Deed of Trust on the Property in favor of Seattle Funding Group reconveyed and  
13 released from the Property, which amount is estimated to be approximately \$411,000 to  
14 414,000;

15           (2)    The Receiver shall pay broker Resonate Real Estate a commission of \$19,600,  
16 which amount will be split with Buyer’s broker in a fashion consistent with the listing  
17 agreement and the description in the Bella Pacific Motion;

18           (3)    The Receiver shall pay the seller’s share of the costs of sale, including escrow,  
19 title, and recording fees, which are anticipated to be approximately \$4,900; and

20           (4)    The Receiver is immediately authorized to complete the sale transaction,  
21 including executing any and all documents as may be necessary and appropriate to do so,  
22 with the remaining sale proceeds, after the above-referenced payments have been made  
23 from escrow, going to the receivership estate.

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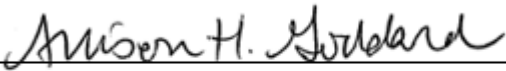
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1           **IT IS FURTHER ORDERED** that after closing, the Receiver shall provide a full  
2 accounting of sale costs, property tax credits received and/or property taxes paid, the  
3 precise release price paid to Seattle Funding Group, and the amount ultimately returned to  
4 the receivership estate from the sale proceeds.

5           **IT IS SO ORDERED.**

6 Dated: October 16, 2020

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9 Honorable Allison H. Goddard  
10 United States Magistrate Judge  
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